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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3734 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BARKATALI INAYATKHAN PATHAN THRO'MOTHER ZUBEDAKHATUN I
Versus
COMMISSIONER OF POLICE

Appearance:
1. Special Civil Application No. 3734 of 2001
MR NM KAPADIA for Petitioner No. 1
MR K.T.DAVE, AGP for Respondents No. 1-4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated April 14, 2001, (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated April 14, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act as four cases under the prohibition Act are registered against the petitioner which are still pending for trial. Besides this, statements of two witnesses are recorded and therefore, according to the detaining authority her activities are prejudicial to the maintenance of public order and and public health and, therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr. N.M.Kapadia, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate his argument he contended that the detaining authority has not supplied the relevant papers i.e. the report of the chemical analyzer and on this ground alone this petition deserves to be allowed as the right of the petitioner to make an effective representation as enshrined in Article 22(5) of the Constitution is infringed. He, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

5. Mr. K.T.Dave, learned AGP appeared on behalf of the respondent State and has opposed the petition by making oral submissions. He contended that so far as the contention with respect to the non-supply of chemical analyzer report is concerned, it is not a vital document. Therefore, C.A. report has rightly not supplied to the petitioner/detenu. There was no question of supplying the same to the petitioner/detenu. He, therefore, urged to dismiss the petition.

6. I have considered the submissions advanced by the

learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. The order of detention dated April 14, 2001 indicates about the involvement of the petitioner in bootlegging activities and, therefore, the detaining authority considered him as a bootlegger and in view of the registration of four cases against him and on the basis of the statements of two witnesses, the detaining authority thought it fit to detain him. It further indicates that the activities of the petitioner have become an obstruction to the maintenance of public order and ordinary provisions of law are found insufficient and since she continued her aforesaid activities there was no other alternative but to pass the order of detention against him.

8. A similar question arose before the Supreme Court in the case of M.AHAMEDKUTTY VS. UNION OF INDIA AND ANOTHER, (1990) 2 SCC page 1. The Supreme Court in the said case has considered the effect of non supply of the documents. In that case, documents like bail application and the bail order were not supplied by the detaining authority to the detenu and, therefore, the Supreme Court held that right to make representation enshrined under Article 22(5) of the Constitution is violated and continued detention was held to be illegal.

9. This Court in the case of AMRUTBHAI RAMABHAI VS. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1994 (2) GLH (U.J.) 5 has held that non supply of C.A. report to the detenu though demanded by him is also a vital factor to be considered since it infringed the right of the detenu to make effective representation under Article 22(5) of the Constitution.

10. Applying the aforesaid principles laid down by the Supreme Court as well as this Court to the facts of the present case, it is clear that the present case is identical to the cases referred to above. In the present case also the C.A. report has not been supplied to the petitioner/detenu. There is no dispute that the C.A. report has not been supplied to the petitioner/detenu. There is also no dispute that the C.A. report is a vital document as on the basis of the said report it can be examined whether the samples collected by the investigating officer while registering complaints under the Prohibition Act in fact contained alcohol or not and if ultimately the C.A. report reveal that the samples collected do not contain alcohol in that case it can be

said that the petitioner is not involved in prohibition cases and is not a bootlegger within the meaning of Section 2(b) of the Act. Therefore, in my view, non supply of such document irrespective of the fact whether they are considered at the time of passing the order of detention or not, are vital documents and non supply of such documents vitiates the continued detention of the detenu. Therefore, continued detention of the petitioner/detenu has become illegal and on the sole ground the order of detention is required to be quashed and set aside by setting the petitioner/detenu at liberty forthwith.

11. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated April 14, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*